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OFFICE OF PETITIONS

In re Application of

Messerges, et al.

Application No. 10/028,164

Filed: October 25, 2001

Attorney Docket No. CR00287M

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DECISION ON PETITION

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181(a), filed October 30, 2006.

The petition is **granted**.

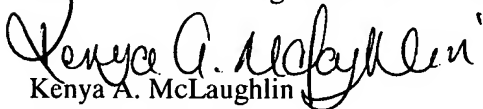
This application was held abandoned May 4, 2006, after no reply was received to the non-final Office action mailed February 3, 2006. The notice set forth a shortened statutory period of reply of three-months from its mailing date. No response was received within the allowable period and the application became abandoned on May 4, 2006. The instant petition was filed on October 30, 2006. Petitioner maintains that the non-final Office action was never received and provides a copy of the relevant docketing calendar as proof of the same.

Section 711.03(c)(II) of the *Manual of Patent Examining Procedure* ("MPEP") provides that in order to establish non-receipt of an Office action so as to prove that the imposition of a holding of abandonment is improper, petitioner must: 1) provide a statement to the Office indicating that the Office action was not received by petitioner; 2) include in the statement an attestation to the fact that a review of the file jacket and docket records maintained by petitioner indicates that the Office action was not received; and 3) provide a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

Petitioner has met the burden of proof as established by Section 711.03(c)(II) of the MPEP. The holding of abandonment is, therefore, withdrawn.

The application file is being forwarded to Technology Center 2100, GAU 2137 for further processing including re-mailing of the non-final Office action and resetting of time period for reply.

Questions concerning this decision should be directed to the undersigned at (571) 272-3222.


Kenya A. McLaughlin
Petitions Attorney
Office of Petitions